

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICO WALLACE,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2003

No. 237115

Wayne Circuit Court

LC No. 99-011705-01

Before: Cooper, P.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver between 225-650 grams of cocaine. MCL 333.7401(2)(a)(ii). Defendant was sentenced to twenty to thirty years' imprisonment for this offense. He appeals as of right. We affirm.

**I. Background Facts**

On October 20, 1999, police executed a search warrant at a home on Bluehill in the City of Detroit. Upon entering the home, officer Deneal Mitchell observed defendant coming towards him from the kitchen. After defendant was detained, a further search of the home was conducted and police seized over 225 grams of cocaine and a digital scale from the kitchen area. The police also discovered a three-beam scale and a pistol in the basement. Defendant was the only person in the home when the search warrant was executed. He was subsequently placed under arrest and the police confiscated \$1,835 from his person. Officer James Lewis, the affiant on the search warrant, testified that he observed defendant on previous occasions entering the house that month.<sup>1</sup>

Tiffany Wilson testified that she owned the house on Bluehill and that defendant used to reside there with her. At the time of this incident, defendant was no longer living in the house but retained a key. Ms. Wilson stated that she and defendant had a child together and still

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<sup>1</sup> We note that Officer Lewis described defendant in the search warrant as about thirty-two years of age, medium complexion, and approximately 6'1". Officer Lewis admitted at trial that defendant was probably about 6'3" with a dark complexion. However, Officer Lewis testified he was positive that defendant was the same person that he saw enter the house three days before the search warrant was executed.

maintained a friendly relationship. Defendant testified that he went to the house that day because Ms. Wilson called him and told him that she wanted to speak with him in person. According to defendant, this was the first time he went to the house that month. Ms. Wilson corroborated this testimony. She further stated that Charles Anderson, her boyfriend at the time, told her that the drugs belonged to him.

Before the jury was sworn in this case, defense counsel objected to the composition of the jury panel. Specifically, defense counsel noted that while defendant was both an African-American and a resident of the city of Detroit, of the twenty-four people on the panel only one was a resident of Detroit and only three were African-Americans. Nevertheless, defense counsel conceded that he lacked sufficient information to challenge the entire venire and that for this reason declined to make such a motion. The trial court noted that it had been informed that the jury selection process in Wayne County was in compliance with the law. After the jury convicted defendant of the charged offense, defense counsel moved for a new trial and an evidentiary hearing to inquire into the jury selection process. The trial court granted defendant's motion for an evidentiary hearing.

During the evidentiary hearing, Chief Judge Michael Sapala testified that when he was presented with the issue of the underrepresentation of Detroit residents in jury pools in late 1998, he reviewed the law and determined that the jury selection process utilized by Wayne County was constitutional. Nevertheless, he stated that he was dissatisfied with the number of Detroit residents that were sitting on jury panels.<sup>2</sup> However, he labeled the disparity as "a political problem, a fairness problem, a justice problem, *not* a constitutional problem." (Emphasis added).

Chief Judge Sapala noted that in 1999, the percentage of Detroit residents living in Wayne County was approximately 45 percent, but that only about 20 to 25 percent of the jury arrays were comprised of Detroit residents. Despite his belief that the jury selection process was constitutional, Chief Judge Sapala instructed the jury manager to send out 12,000 additional questionnaires to Detroit residents in late 1999. When there was still an insufficient increase by the Fall of 2000, Chief Judge Sapala ordered that an additional 110,000 questionnaires be sent to Detroit residents. As a result of these measures, Chief Judge Sapala claimed that the percentage of Detroit residents in Wayne County jury arrays now closely matches the percentage of jury-eligible Detroit residents in Wayne County.

Defense counsel next called James McCree to the witness stand. Mr. McCree testified that he is the director of jury services for the Wayne County Circuit Court and has held that position since August of 1997. Mr. McCree stated that he served from 1985 until 1997, as the jury manager for the former Recorder's Court. Mr. McCree testified that he has been directly involved with assisting the Wayne County Jury Commission in mailing juror questionnaires and keeping statistics concerning jury selection.

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<sup>2</sup> Chief Judge Sapala emphasized that his answers pertained only to Detroit residents and not African-Americans. He noted that adjusting jury pools or arrays upon the basis of race was illegal.

Mr. McCree explained that the Secretary of State is required by law to annually forward a list of jury-eligible persons living within a county to each county's jury commission.<sup>3</sup> He further stated that a person is considered jury-eligible for the "source list" if they reside in the county, are over eighteen years of age, and hold either a Michigan driver's license or state identification card. According to Mr. McCree, this source list is used to obtain the names of individuals who will be sent jury questionnaires. The source list Wayne County received in 2000 contained the names of 1,285,732 individuals and revealed that 621,373 of these people were residents of Detroit. Thus, he claimed that approximately 48 percent of the jury-eligible population in Wayne County were Detroit residents.<sup>4</sup> According to the number of questionnaires sent out, Mr. McCree stated that approximately 34 percent of residents throughout the county qualified as jury-eligible. He claimed that the percentage of jury-eligible Detroit residents was close to the county average.

For the 1999-2000 fiscal year, Mr. McCree stated that 720,840 questionnaires were mailed to prospective Wayne County jurors. Of this total, 285,861, or approximately 39 percent, were mailed to Detroit residents. Subtracting the undeliverable questionnaires,<sup>5</sup> Mr. McCree testified that 51.3 percent of the prospective jurors throughout Wayne County returned their questionnaires. According to Mr. McCree, prospective Detroit jurors returned their questionnaires at approximately the same rate, 47.44 percent. Mr. McCree claimed that after the questionnaires were returned, but before summonses were mailed out, some potential jurors were disqualified from duty pursuant to statute.<sup>6</sup> According to Mr. McCree, Detroit residents typically disqualified for jury duty at a higher rate than other communities in Wayne County.

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<sup>3</sup> See MCL 600.1310(4).

<sup>4</sup> We note that Mr. McCree further testified that Detroit residents comprised approximately 46 percent of the total population living in Wayne County.

<sup>5</sup> About 7 percent of the questionnaires were returned as undeliverable but they were not distinguished by city. According to Mr. McCree, undeliverable questionnaires are those that the post office returns that indicate that the individual no longer resides at the address.

<sup>6</sup> According to MCL 600.1307a:

(1) To qualify as a juror a person shall:

(a) Be a citizen of the United States, 18 years of age or older, and a resident in the county for which the person is selected, and in the case of a district court in districts of the second and third class, be a resident of the district, and in the case of municipal courts of record, be a resident of the municipality.

(b) Be conversant with the English language.

(c) Be physically and mentally able to carry out the functions of a juror. Temporary inability shall not be considered a disqualification.

(d) Not have served as a petit or grand juror in a court of record during the preceding 12 months.

(e) Not be under sentence for a felony at the time of jury selection.

Exemptions. (2) A person more than 70 years of age may claim exemption from jury service and shall be exempt upon making the request.

Mr. McCree also testified regarding the process used by the county to choose potential jurors from the source list. Mr. McCree asserted that the names of potential jurors have been chosen under the current computer system since 1993. He explained that a key number and a randomly selected start number, the point on the source list where the computer begins counting, are used to select potential jurors from the source list. For example, Mr. McCree stated that if the source list contained a million names, and approximately 500,000 questionnaires were necessary, then the key number would be two and every other person after the start number would receive a questionnaire.

Mr. McCree testified that prior to 1993, Wayne County used a jurat to assure that the various communities in the county would be proportionately represented. He stated that the Wayne County Jury Commission defined a jurat as a group of one hundred jurors and explained that these individuals were manually chosen from the returned and qualified questionnaires. Each jurat was comprised of individuals in proportion to their city's jury-eligible population in the county. Thus, if Detroit represented 40 percent of the population there would be forty Detroit jurors placed in every jurat. Mr. McCree stated that this procedure was used whenever county-wide summonses were being mailed. For instance, if five hundred summonses were being mailed, then five jurats would be compiled. The jurat system was abolished in 1993 when the new computer system was installed and a new court administrator was hired.

Mr. McCree testified that the court administrator eliminated the jurat after concluding that the new computer system was completely random. However, Mr. McCree alleged that he noticed a marked decrease in the percentage of Detroit residents in Wayne County jury pools after the jurat was removed. He claimed that the percentage of Detroit residents in jury pools dropped from approximately 40 percent to 25 percent, and remained that way until Chief Judge Sapala instituted changes in the system. Mr. McCree blamed the elimination of the jurat for the decrease of Detroit residents in Wayne County jury pools.

Mr. McCree testified that throughout the year 2000, residents of Detroit comprised approximately 20 to 25 percent of the jurors on Wayne County jury panels. However, Mr. McCree explained that these percentages took into account only those people that received summonses. On August 28, 2000, the day of defendant's trial, 389 jurors were drawn. Ninety-six of these jurors were residents of Detroit. Thus, Mr. McCree estimated that 25 percent of the jurors drawn that day were Detroit residents.

Mr. McCree alleged that prior to the current reforms, the Jury Commission's intention was to send questionnaires to the different cities within Wayne County in proportion to their jury-eligible population. However, Mr. McCree noted that the fact Detroit residents disqualified by statute at a higher rate than non-residents contributed to the underrepresentation of Detroit residents in the Wayne County jury pools. Mr. McCree testified that Chief Judge Sapala instituted the current reforms to correct this problem. He claimed that since the reforms were instituted, 265,000 questionnaires have been mailed. Of these questionnaires, approximately 70,000 were originally slated to be sent to Detroit residents, but the reforms provided that an additional 110,000 be mailed to Detroit residents. With the current reforms, Mr. McCree estimated that Detroit residents now receive more than two-thirds of the questionnaires mailed to potential jurors in Wayne County.

As a result of Chief Judge Sapala's reforms, Mr. McCree testified that approximately 40 percent of the jury pool was made up of Detroit residents and he expected this number to increase. Without these reforms, Mr. McCree opined that the percentages of Detroit residents on Wayne County juries would decrease to the levels seen in defendant's case. Mr. McCree specifically attributed this phenomena to the lower qualification rate of Detroit residents and not to any internal factor that the Jury Commission could control.

The last witness defendant called, Mr. Bruce Kaye, testified as an expert statistician.<sup>7</sup> Specifically, Mr. Kaye explained and applied the three different methods described in case law to determine if a specific group is underrepresented.<sup>8</sup> Using the numbers provided by Mr. McCree, he claimed that if 48.3 percent of the 720,840 questioners were mailed to Detroit residents, then they should have sent 348,165 questionnaires. However, Mr. Kaye noted that Detroit residents only received 285,902 questionnaires, which amounted to 62,263 fewer questionnaires than they were entitled to under a proportionate system.<sup>9</sup> He further testified that if 81.2 percent of the population in Detroit was African-American, then the percentage of African-American jury-eligible Wayne County residents living in Detroit would be 39.2 percent. On the day of defendant's trial, Mr. Kaye stated that 23.2 percent of the jurors sitting on the six panels were Detroit residents and that 24.67 percent of the jurors originally drawn for jury service were Detroit residents. Because 81.2 percent of the Detroit population is African-American, Mr. Kaye determined that 18.85 percent of the jurors sitting on the six panels were African-American Detroit residents and that 20.04 percent of the jurors originally drawn were African-American Detroit residents.

Mr. Kaye calculated the absolute disparity in this case for both jury-eligible African-American Detroit residents actually selected for juries, and for those included in the jury venire. Absolute disparity is defined as "the difference between the percentage of a certain population group eligible for jury duty and the percentage of that group who actually appear in the venire." *People v Smith*, 463 Mich 199, 216-217; 615 NW2d 1 (2000) (Cavanagh, J., concurring), quoting *Ramsuer v Beyer*, 983 F2d 1215, 1231 (CA 3, 1992). Mr. Kaye's results depicted an absolute disparity of 20.39 percent for African-American Detroit residents sitting on a jury and 19.2 percent for those originally drawn for jury service. Courts have held that absolute disparities of less than 11.5 percent do not indicate unfair representation. *Smith, supra* at 217 (Cavanagh, J., concurring).

Mr. Kaye next applied the comparative disparity analysis by dividing the absolute disparity by the number of African-American jury-eligible Detroit residents. As noted in *Smith, supra* at 218 (Cavanagh, J., concurring), quoting *Ramsuer, supra* at 1231-1232, comparative disparity "measures the diminished likelihood that members of an underrepresented group, when compared to the population as a whole, will be called for jury service." The comparative disparity for African-American Detroit residents included in a jury venire was 51.96 percent. However, the comparative disparity was 48.93 percent for African-American Detroit residents

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<sup>7</sup> We note that Mr. Kaye is also a certified public accountant and an attorney.

<sup>8</sup> *People v Smith*, 463 Mich 199, 203-204; 615 NW2d 1 (2000).

<sup>9</sup> A review of the record reveals that 285,861 questionnaires were actually mailed.

originally drawn for jury service. Comparative disparities of forty percent have been determined to be of “borderline” significance. *Smith, supra* at 219 (Cavanagh, J., concurring).

Lastly, Mr. Kaye conducted a standard deviation analysis. This analysis explains the probability that any disparity was the result of random chance. *Id.* at 219. In this case, Mr. Kaye determined that the standard deviation was 9.63. According to *Smith, supra* at 220, if the disparity exceeds one standard deviation then the representation is unfair. Standard deviation is determined:

by multiplying the number of prospective jurors in the jury pool by the percentage of the distinct group in the population by the percentage of the population that is not in the distinct group, and then taking the square root of that product. The square root is the standard deviation. *Id.* at 220.

Mr. Kaye explained that if 39.24 percent of the total members of the jury pool (389) were African-American Detroit residents, then they should have comprised 153 members of the venire. With a standard deviation of 9.63, Mr. Kaye testified that in 68 percent of the cases the number of African-American Detroit residents in a venire should have fallen between 143 to 162.26. He alleged that the odds of having only 96 Detroit residents on a jury pool, with approximately 80 being African-Americans, was less than a tenth of a percent (.001). Based on the approximate number of juries picked in Wayne County in a given year, Mr. Kaye estimated that this could happen about once in every five years.

Defendant essentially argued before the trial court that this evidence established a *prima facie* violation of the fair cross-section requirement. He asserted that there was no doubt that African-Americans are recognized as a distinctive group. To the extent the prosecution claimed that there was no evidence of the racial composition of Wayne County communities outside of Detroit, defendant noted that 81.2 % of Detroit residents were African-American and that Detroit residents comprised almost half of the jury-eligible population in the county. Defendant alleged that because “black Detroit residents have been significantly underrepresented, then it necessarily follows that blacks in Wayne County have been significantly underrepresented.” He further cited Mr. Kaye’s testimony as clear statistical proof that African-American “prospective jurors in Detroit, and therefore Wayne County, were significantly and substantially underrepresented in Wayne County jury venires at the time of his trial.”

Defendant asserted that this exclusion was systematic and inherent within the jury selection process used by Wayne County. He maintained that there was no basis for the prosecution’s claim that Detroit residents responded less often to questionnaires and summonses than others within the county. Rather, defendant asserted that the numbers indicated that Detroit residents returned their questionnaires at approximately the same rate as other communities. He alleged that the reasons offered by Mr. McCree to explain the discrepancy in this case were merely hypothetical and that the statistical evidence clearly revealed that jury questionnaires were not sent in an impartial manner. He noted that Detroit residents received only 39.6% of the jury questionnaires, despite the fact that they constituted 48.3% of Wayne County’s jury-eligible population. Defendant further opined that Chief Judge Sapala’s recent changes did not exonerate the defects of the jury system during defendant’s trial.

While the prosecution agreed that African-Americans are considered a distinctive group for Sixth Amendment purposes, it argued residents of Detroit did not necessarily constitute such a group. Rather, the prosecution opined that evidence concerning the racial composition of other communities in Wayne County could offset defendant's alleged underrepresentation of African-Americans in the county based solely on statistics concerning Detroit residents. Plaintiff also asserted that the results of the absolute disparity test, the comparative disparity test, and the standard deviation analysis were "only marginally greater than the percentages found to be of 'borderline significance' in *Ramseur*, supra . . . ."

Ultimately, however, the prosecution argued that any alleged problem in this case was caused by factors external to the jury system. Specifically, the prosecution asserted that Detroit residents responded less often to questionnaires and summonses. Plaintiff observed that the current reforms required that Detroit residents be "oversampled" in order to increase their rate of participation. Plaintiff concluded that if the disparities were due to anything other than social or economic factors, "we would not now need to send nearly 70% of jury questionnaires to Detroiters in order to get somewhat more than 40% Detroiters on jury panels."

On August 28, 2001, the trial court issued an opinion and order denying defendant's motion for a new trial. The trial court concluded that defendant clearly met his burden of showing that the allegedly excluded group was distinctive within the community and that the group was significantly underrepresented. However, the trial court determined that defendant failed to show that this underrepresentation was due to a systemic exclusion of the group. According to the trial court, the testimony established that a purely random selection system was in place for jury selection and that the disproportionate results were due to social and economic factors in the city of Detroit. The trial court noted that the subsequent steps taken to create a more representative jury panel was "more than the law requires the jury commission to do and is in fact evidence of an intent to not exclude any group from jury service."

## II. Jury Composition

On appeal, defendant contends that he was denied his right to an impartial jury drawn from a fair cross-section of the community because African-Americans were systemically excluded from Wayne County's jury venires. US Const, Am VI; Const 1963, art 1, § 14. We disagree. A trial court's decision to grant or deny a motion for new trial is reviewed on appeal for an abuse of discretion. *People v Libbett*, 251 Mich App 353, 358; 650 NW2d 407 (2002). Questions concerning the systemic exclusion of minorities in jury venires are reviewed de novo. *People v Hubbard*, 217 Mich App 459, 472; 552 NW2d 593 (1996).

"A criminal defendant is entitled to an impartial jury drawn from a fair cross section of the community." *Id.*, citing *Taylor v Louisiana*, 419 US 522, 526-531; 95 S Ct 692; 42 L Ed 2d 690 (1975). To establish a prima facie violation of the fair-cross-section requirement, the defendant bears the burden of proving "that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process." *Smith*, supra at 203; citing *Duren v Missouri*, 439 US 357, 364; 99 S Ct 664; 58 L Ed 2d 579 (1979).

According to the first prong of the *Duren* test, defendant must show that African-American Detroit residents are a cognizable group "capable of being singled out for

discriminatory purposes . . . and have been held a distinctive group for jury composition purposes.” *Smith, supra* at 215 (Cavanagh, J., concurring) (citation omitted). The case law clearly states that African-Americans are a distinctive group. *Id.*

Once defendant has established the existence of a distinctive group, he bears the burden of providing evidence that any disparity with respect to this group was legally significant. In *Smith, supra* at 204, our Supreme Court adopted a case-by-case approach in making such a determination. It specifically required courts to consider the results of the absolute disparity test, the comparative disparity test, and the standard deviation analysis, when determining if representation was fair and reasonable. *Id.*

However, even presuming that defendant can establish the first two prongs of the *Duren* analysis in this case, he has failed to meet the third prong by showing that the underrepresentation was due to a flaw inherent in the jury selection system. See *Smith, supra* at 205. “[A]ll that is required is that ‘jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups . . . .’” *Id.* at 226, quoting *Taylor v Louisiana*, 419 US 522, 538; 95 S Ct 692; 42 L Ed 2d 690 (1975). Moreover, systematic exclusion requires a showing of several instances of a particular venire being disproportionate. *People v Williams*, 241 Mich App 519, 526; 616 NW2d 710 (2000). Nevertheless, “the influence of social and economic factors on juror participation does not demonstrate a systematic exclusion of African-Americans.” *Smith, supra* at 206.

In the instant case, the jury selection process appears facially neutral. Jury questionnaires were mailed to individuals that were randomly selected from a source list comprised of licensed Michigan drivers and identification card holders living within the county. See MCL 600.1304. The selection process involved a key number system, with a randomly selected start number, which would choose the individuals from the list that would receive questionnaires. We note that race was not indicated on either the source list or the questionnaires.

Despite this apparent randomness, defendant contends that there must be a defect in the current jury selection process because the percentage of Detroit residents on Wayne County juries has dramatically decreased since the elimination of the jurat. He specifically notes that Detroit residents received approximately nine percent fewer questionnaires in 2000 “than they should have received had their proper percentage been built into the jury selection system.”

While the number of Detroit residents on Wayne County juries clearly began to decline after the elimination of the jurat, the record reveals that this was due to the fact that Detroit residents disqualified, pursuant to statute, at a higher rate than other Wayne County residents. For instance, individuals can be disqualified or exempted from jury duty because of: (1) age; (2) citizenship; (3) medical conditions; (4) an inability to speak and understand English; (5) service on a petit or grand jury within the previous twelve months; (6) the fact that they moved out of the county; or (7) being under a sentence for a felony. MCL 600.1307a. This higher disqualification rate directly impacted the number of summonses that Detroit residents would receive to participate in jury pools. Nevertheless, there is no “obligation under the Sixth Amendment to affirmatively counteract ‘private sector influences’ . . . .” *Smith, supra* at 227 (Cavanaugh, concurring), quoting *United States v Purdy*, 946 F Supp 1094, 1104 (D Conn, 1996). As previously stated, the effect of social and economic influences on a population’s juror participation is not considered indicative of systematic exclusion. *Smith, supra* at 206.



Moreover, we note that a jurat was only comprised of those questionnaires that were returned and deemed qualified. The jurat system did not have any control over the number of questionnaires that were mailed. Rather, it appears that the jurat system compensated for the Detroit residents' higher disqualification rate because it was only enforced after the questionnaires were returned and qualified. Further, the jurat only guaranteed the proportional representation of Detroit residents because qualified questionnaires were manually selected in direct proportion to a population's jury eligible residents in Wayne County. We note that a defendant is not constitutionally entitled to a petit jury that precisely mirrors the makeup of the community. *Williams, supra* at 527. Consequently, the fact Detroit representation in Wayne County juries decreased after the jurat was abolished does not indicate that the current system contains an inherent flaw.<sup>10</sup>

Accordingly, we find that defendant has failed to prove that the underrepresentation of African-American Detroit residents in this case was due to any inherent flaw within Wayne County's jury selection system. As noted in Justice Cavanagh's concurring opinion, in *Smith, supra* at 228, "a finding that . . . disparities are not unconstitutional is not the same as an endorsement of such discrepancies." *United States v Reyes*, 934 F Supp 553, 566 (SD NY, 1996). Defendant's arguments should give pause to anyone who suggests that black Americans have achieved socioeconomic parity with white Americans."

## II. Sentencing

Defendant also asserts that he is entitled to resentencing because there were substantial and compelling reasons for a downward departure from the sentencing guidelines. We disagree. A trial court's decision that substantial and compelling factors merit a departure from the statutory minimum sentence is reviewed for an abuse of discretion. *People v Izarraras-Placante*, 246 Mich App 490, 497; 633 NW2d 18 (2001). However, whether a factor is objective and verifiable is subject to review de novo on appeal. *People v Babcock*, 250 Mich App 463, 467; 648 NW2d 221 (2002).

Under MCL 333.7401(4) a trial court may depart from the minimum term of imprisonment under the statute "if the court finds on the record that there are substantial and compelling reasons to do so." However, a trial court may only consider objective and verifiable factors when determining if substantial and compelling reasons exist to deviate from the statutorily required minimum sentence. *People v Daniel*, 462 Mich 1, 6; 609 NW2d 557 (2000). In *Daniel, supra* at 7, the court explained that examples of objective and verifiable factors a trial court could consider included: "(1) mitigating circumstances surrounding the offense, (2) the defendant's prior record, (3) the defendant's age, and (4) the defendant's work history." It is important to note that "only in exceptional cases should sentencing judges deviate from the minimum prison terms mandated by statute." *Id.*

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<sup>10</sup> We note that the extensive measures taken by Chief Judge Sapala to ensure that more Detroit residents are included in Wayne County jury pools provides further proof that the underrepresentation problem in this case was due to outside factors. Indeed, to achieve a proportionate representation in jury pools, Detroit residents now receive over two-thirds of all the questionnaires mailed to potential jurors.

Defendant suggests that the following factors in this case are substantial and compelling: (1) his age of thirty-one years; (2) the fact he has only one prior felony; (3) his steady employment for the past seven years and his ownership of a landscaping business since 1997; (4) his strong family support; (5) the fact that he was tried before a jury that did not fairly represent the population of Wayne County; and (6) the overall weakness of the evidence against him. Defendant further opines that recent changes in the law have created an irrational sentencing scheme. Specifically, he claims that the punishment for his offense was harsher than for those convicted of the higher offense of possession with intent to deliver more than 650 grams of cocaine. He further asserts that the trial court erred by summarily disposing of his motion for downward departure after the imposition of sentence.

The trial court sentenced defendant according to the statute and noted at the conclusion of the sentencing hearing that it did not find substantial or compelling reasons in defendant's motion to warrant deviation. Thus, contrary to defendant's claim, the trial court did not fail to exercise its discretion. Rather, it affirmatively found that the reasons elucidated by defendant were not substantial and compelling.

After reviewing the record, we find no error with the trial court's decision. It appears that the only objective and verifiable criteria that defendant presented included his age, work history, and criminal background. See *id.*; *People v Bates*, 190 Mich App 281, 283; 475 NW2d 392 (1995) (family support is considered unverifiable). To the extent defendant argues that the composition of his jury and the alleged weakness of the evidence presented at trial warranted a reduction in his sentence, these are not objective and verifiable mitigating circumstances *surrounding his offense*. *Daniel, supra* at 7.

In response to defendant's claim that the sentencing scheme is irrational, we note that the Legislature is vested with "the exclusive authority to determine the terms of punishment imposed for violations of the criminal law." *People v Torres (On Remand)*, 222 Mich App 411, 420; 564 NW2d 149 (1997).

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Pat M. Donofrio